

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**EAGLES LANDING DAYCARE &  
LEARNING CENTER,**

**Plaintiff,**

**v.**

**SPARTA INSURANCE COMPANY,**

**Defendant.**

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**CIVIL ACTION FILE**

**NO. 1:14-CV-00465-HLM**

**DEFENDANT’S REPLY BRIEF TO PLAINTIFF’S RESPONSE IN  
OPPOSITION TO MOTION TO ENFORCE APPRAISAL AWARD**

**COMES NOW** SPARTA INSURANCE COMPANY (hereinafter “Sparta”) and files this, its Reply Brief to Plaintiff’s Response in Opposition to Enforce Appraisal Award, and shows this Honorable Court as Follows:

Plaintiff contends that the court appointed umpire made a mistake in his award because the “determination in this matter articulated a belief that there was no damage at all from any hail in this case”, and that the appraisal determination should be set aside. (Opposition P. 3). Plaintiff supports this argument by stating that “the parties had all ready [sic] agreed that there was at least an amount of hail damage that was not only covered by the subject insurance policy, but that was

approaching \$140,000 in value”. (Opposition P. 3). In other words, Plaintiff takes issue with the umpire’s decision regarding value of damages.

As conceded by Plaintiff in its Opposition, in order to challenge an appraisal award, there must be “evidence of fraud, oppression, irregularity, or unfairness, *other than on the disputed issue of value*, and no other circumstances tending to raise the issue . . . .” Bell v. Liberty Mut. Fire Ins. Co., 319 Ga. App. 302 (2012). (citing Southern General, 187 Ga. App. at 497)(emphasis added). “Thus, unless there is fraud sufficient to set the appraisal award aside, the trial court should have directed a verdict . . . on the issue of amount of loss.” Southern General, 187 Ga. App. at 497. Even if there is evidence of fraud, oppression, irregularity or unfairness, such cannot relate to “*the disputed issue of value.*” Id. (emphasis added).

The umpire’s observations finding no damage related to the hailstorm is simply a decision regarding the value of damages. Sparta’s decision to make payment on the claim has no bearing on the umpire’s decision. In fact, the umpire’s decision actually illuminates that Sparta was more than generous in its payment to Plaintiff. As Georgia has clearly held, an appraisal award cannot be set aside over a dispute regarding the value of a claim. Accordingly, Sparta

respectfully requests that this Court Order enforcement of the appraisal award and dismiss this action.

This 23<sup>rd</sup> day of March 2015.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: /s/ Pamela N. Lee  
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**CERTIFICATE OF FONT & CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was prepared in Times New Roman 14-point font in conformance with Local Rule 5.1(C), and that I have this day electronically filed this *Defendant's Reply Brief to Plaintiff's Response in Opposition to Enforce Appraisal* with the Clerk of Court using the CM/ECF system and served upon all counsel of record, by electronic filing and/or United States mail, postage prepaid, and properly addressed as follows:

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This 23<sup>rd</sup> day of March 2015.

**SWIFT, CURRIE, MCGHEE & HIERS, LLP**

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